

**CIVIL SERVICE COMMISSION MINUTES
SEPTEMBER 3, 2008**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

W. Dale Bailey
A.Y. Casillas
Barry I. Newman

Absent was:

Francesca Krauel

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
Karen F. Landers, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission
October 1, 2008**

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
SEPTEMBER 3, 2008

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters
 and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
 Diego, California

<u>Discussion Items</u> 5,6	<u>Continued</u>	<u>Referred</u> 7,8	<u>Withdrawn</u>
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COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Casillas. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Bailey: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) **2008-06**,
appealing an Order of Termination and Charges from the
Sheriff's Department.

OPEN SESSION AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda
items unless additional time is requested at the outset and
approved by the Commission President. **Please be sure to silence
your cell phones and pagers.**

MINUTES

1. Approval of the Minutes of the regular meeting of August 6,
2008.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: Daniel Ortiz, Worksite Organizer, SEIU Local 221, on behalf of **Ray Scott**, Senior Cook, appealing an Order of Suspension and Charges from the Sheriff's Department.

Confirmed.

3. Commissioner Casillas: Richard Pinckard, Esq., on behalf of **2008-08**, appealing an Order of Immediate Suspension and Charges from the Sheriff's Department.

Confirmed.

4. Commissioner Bailey: James Stevens, Esq., on behalf of **Richard Needham**, former Senior Departmental Personnel Officer, appealing an Order of Removal and Charges from the County Library.

Confirmed.

DISCIPLINE

Findings

5. Commissioner Bailey: **2008-06**, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was a Deputy Sheriff-Detentions who was terminated for violating the Department's policy against associating with persons who have served time in custody. At the Commission hearing, most of the relevant underlying facts were introduced by way of two written stipulations between the parties. The only issue in the hearing was the level of discipline.

At the Commission hearing, the stipulations and the evidence established the following: between November and December 2006, an inmate under Employee's supervision wrote three letters to Employee. In the letters, the inmate spoke of a romantic/sexual interest in Employee. The last of the letters contained the inmate's phone number and the request that Employee call the inmate after he/she was released. After the inmate's release, Employee contacted the inmate with the intention of exploring a possible romantic relationship.

Employee disclosed the conduct in documentation that was preliminary to a computer voice stress analysis test, which Employee was to undergo as part of Employee's application for a position as a patrol deputy.

Employee's conduct was a violation of the Department's "Associations" policy, which prohibited associations with certain persons, including felons, drug users, and persons who were or had been in County custody. The inmate at issue was all of the foregoing. The conduct occurred over a lengthy period of time. It pertained to an inmate who was entrusted to Employee's supervision. The misconduct undermined Employee's integrity, as well as the public trust in Employee. With respect to mitigating factors, Employee's self-disclosure of the conduct was offset by the fact that such disclosure arose only as part of a 'lie-detector' test. Employee's inexperience was offset by her recent academy training. The Associations policy is a fundamental and well known policy, of which Employee was aware. Therefore, it is recommended that the Order or Termination be affirmed; that the Commission read and filed this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Newman. Carried.

AYES:	BAILEY, NEWMAN, CASILLAS
NOES:	NONE
ABSTENTIONS:	NONE
ABSENT:	KRAUEL

6. Commissioner Bailey: Supplemental Decision in compliance with a Superior Court Judgment and Writ of Mandamus regarding a January 16, 2008 Commission Decision relating to the appeals of **Humberto Bahena** and **Alberto Rios Garcia**, former Food Services Workers, from Orders of Termination and Charges from the Sheriff's Department.

Prior to rendering the Order, Commissioner Bailey commented:

"The results of this case as ordered by the appellate division of the Superior Court is causing this Commission to reverse its decision with regard to Messrs. Bahena and Garcia, and to me they are quite troublesome. Although the Commission has to or is ordered to abide by the Court decision to uphold employees' termination, as the hearing officer, I respectfully (as much as I can use that term)

disagree that the Commission has abused its discretion by modifying terminations to a 30-day suspension.

The reasons that the Commission modified the appointing authority's discipline were that the employees were simply non-sworn peace officers, they should not have suffered the same level of discipline, since they do not enjoy the same rights, nor do they have the same privileges as sworn officers. It's an isolated case of dishonesty, and dishonesty is certainly unacceptable for any employee in the County or the Sheriff's Department in any classification. In this situation, while not condoning dishonesty, it still would not prevent the food service workers from fulfilling, their, his or her routine duties. In contrast, the dishonesty of a sworn officer from performing his duties is certainly one of the most important duties that a sworn officer would have, and that would be the testimony of that officer in court in civil or criminal matters.

With that level of discomfort [I read the Order]":

FINDINGS AND RECOMMENDATIONS:

On January 16, 2008, the Civil Service Commission approved a Decision reducing the Sheriff's Orders of Termination of Humberto Bahena and Alberto Rios Garcia to a 30-day suspension. The Sheriff sought court review of this Order and ultimately prevailed in the Superior Court of California, County of San Diego. The Commission has now been served with a Superior Court Judgment Granting Petition for Writ of Mandamus and a Writ of Mandamus, both dated August 8, 2008, ordering the Commission to vacate its Order of January 16, 2008 and to enter a new Order affirming the Sheriff's termination of Humberto Bahena and Alberto Rios Garcia. Therefore, pursuant to the Writ of Mandamus, the Commission orders as follows:

The Decision of the Commission, dated January 16, 2008, in the matters of Humberto Bahena and Alberto Rios Garcia is set aside; the Sheriff's Orders of Termination and Charges, dated July 9, 2007, are affirmed; and upon approval of this Decision, a copy thereof shall be certified and served on the parties.

Motion by Bailey to approve this Order; seconded by Newman.

Prior to the vote, Commissioner Newman commented: "I fully understand the power of the Superior Court to make that judgment; they have the power to do so. It

is very comparable to our power at one level to reverse, modify or overrule a department decision. I accept that power both as a lawyer and as a member of this Commission. I have no problem with that, but my problem is that I don't like reversing our order without making a comment that we are doing so under the power of the Superior Court, and it is not changing my belief that I share with you [Commissioner Bailey] that our decision was appropriate under the circumstances. I'm just recognizing the power of the Superior Court to do it, and based on that, I am going to be voting for the motion."

AYES:	BAILEY, CASILLAS, NEWMAN
NOES:	NONE
ABSTENTION:	NONE
ABSENT:	KRAUEL

Motion carried.

DISCRIMINATION

Complaints

7. **Matthew Rogers**, Protective Services Worker, alleging racial discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign Commissioner Krauel as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved.

8. **Reynaldo Maldonado**, former Animal Control Officer, alleging racial discrimination by the Department of Animal Services.

RECOMMENDATION: Assign Commissioner Newman as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved.

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INCOMPATIBLE ACTIVITY

9. **Candace Donaldson**, Office Assistant, appealing a Notification of Incompatible Activity from the Health and Human Services Agency.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

OTHER MATTERS

10. Public Input.

ADJOURNED: 3:00 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

OCTOBER 1, 2008

ASSISTANCE FOR THE DISABLED:

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